American Truck & Trailer, Inc. *and* Local 1702, United Paperworkers International Union, AFL–CIO, CLC. Case 1–CA–30243

July 16, 1998

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

Upon a charge and an amended charge filed by the Union on February 25 and April 21, 1993, respectively, the General Counsel of the National Labor Relations Board issued a complaint on May 4, 1993, against American Truck & Trailer, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Subsequently, on May 11, 1993, the Respondent filed an answer to the complaint. On April 8, 1998, however, the Respondent notified the General Counsel of its intent to withdraw its answer and agree to summary judgment.

On June 15, 1998, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On June 18, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent, by letter dated April 8, 1998, withdrew its answer to the complaint. Such a withdrawal has the same effect as a failure to file an answer, i.e., therefore the allegations in the complaint must be considered to be admitted to be true.[1]

Accordingly, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Seekonk, Massachusetts, has been engaged in the provision of vehicle maintenance and contract carrier services. Annually, the Respondent, in conducting its business operations described above, performs contract carrier services valued in excess of $50,000 in States other than the Commonwealth of Massachusetts.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. SUCCESSORSHIP STATUS

About December 24, 1992, the Respondent purchased that portion of the business of Island Transportation Company, Inc. (Island) that performed contract carrier services for Massachusetts Container Corporation, and since then has continued to operate that portion of the business of Island in basically unchanged form.

Before engaging in the conduct described above, the Respondent was put on notice of Island's actual liability in Board Case 1–CA–28866[2] by the personal knowledge of the Respondent's director of operations, Michael Perette, and by letter dated December 21, 1992, from the Regional Director for Region 1 to the Respondent. The Respondent's president, Robert Holmes, and Michael Perette are supervisors within the meaning of Section 2(11) of the Act and are agents of the Respondent within the meaning of Section 2(13) of the Act.

Based on the conduct and operations immediately described above, the Respondent has continued the employing entity with notice of Island's actual liability to remedy its unfair labor practices and is a successor to Island.

III. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, herein called the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time drivers, jockeys, jockey-mechanics, and mechanics employed by Respondent who service Respondent's account with Massachusetts Container Corporation in Marlboro, Massachusetts, but excluding all other employees, guards and supervisors as defined in the Act.

[1] See *Maislin Transport*, 274 NLRB 529 (1985).

[2] *Island Transportation Co*., 307 NLRB No. 187 (July 13, 1992) (not reported in Board volumes).

From about November 19, 1990, until about December 24, 1992, the Union had been the exclusive collective-bargaining representative of the unit employed by Island, and during that period of time the Union had been recognized as such representative by Island. This recognition was embodied in a collective-bargaining agreement effective from November 15, 1990, to November 15, 1993 (the 1990–1993 contract).

Since about December 24, 1992, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a recognition agreement dated January 19, 1993, in which the Respondent, inter alia, agreed to adopt the 1990–1993 contract, remedy the unfair labor practices in Case 1–CA–28866, and pay moneys owed by Island pursuant to all arbitration awards issued against Island.

From about November 19, 1990, to December 24, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employed by Island. At all times since about December 24, 1992, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit.

Since about December 24, 1992, the Respondent has failed and refused to make the payments which have become due to the National Industry Union Pension Plan pursuant to article XXVII of the 1990–1993 contract.

Since about December 24, 1992, the Respondent has also failed and refused to provide the health and life insurance coverage required by article XIX of the 1990–1993 contract.

Since about January 19, 1993, the Respondent has failed and refused to pay Island's obligations to the Respondent's unit employees pursuant to arbitration awards in American Arbitration Association Cases 11 300 00741 91 and 11 300 02368 91, as required by the recognition agreement.

Since about December 24, 1992, the Respondent has also failed and refused to pay Island's liability in Board Case 1–CA–28866, as required by *Golden State Bottling Co. v. NLRB*, 404 U.S. 168 (1973).

Finally, since about January 19, 1993, the Respondent has failed and refused to pay Island's pension liability to the Respondent's unit employees, as required by the recognition agreement.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without the Union's consent.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing: (1) to make the contractually required payments which have become due to the pension plan pursuant to article XXVII of the 1990–1993 contract; (2) to provide the health and life insurance coverage required by article XIX of the 1990–1993 contract; (3) to pay Island's obligations to the Respondent's unit employees pursuant to arbitration awards in American Arbitration Association Cases 11 300 00741 91 and 11 300 02368 91 as required by the recognition agreement; (4) to pay Island's liability in Board Case 1–CA–28866 as required by *Golden State Bottling Co. v. NLRB*, supra; and (5) to pay Island's pension liability to the Respondent's unit employees as required by the recognition agreement, we shall order the Respondent to make whole its unit employees by restoring the employees health and life insurance and making all delinquent payments and contributions, including interest or any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[3]

ORDER

The National Labor Relations Board orders that the Respondent, American Truck & Trailer, Inc., Seekonk,

[3] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the respondent otherwise owes the fund.

Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make the required payments to the National Industry Union Pension Plan pursuant to article XXVII of the 1990–1993 contract.

(b) Failing to provide its unit employees the required health and life insurance coverage pursuant to article XIX of the 1990–1993 contract.

(c) Failing to pay Island's obligations to its unit employees pursuant to arbitration awards in American Arbitration Association Cases 11 300 00741 91 and 11 300 02368 91, as required by the recognition agreement.

(d) Failing to pay Island's liability in Board Case 1–CA–28866, as required by *Golden State Bottling Co*.

(e) Failing to pay Island's pension liability to the Respondent's unit employees as required by the recognition agreement.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make the required payments and contributions as required by articles XXVII and XIX of the 1990–1993 contract, the recognition agreement, and the Board's decision in Case 1–CA–28866.

(b) Make whole the unit employees by restoring the employees' health and life insurance, making all delinquent payments and contributions, and reimbursing employees for any expenses resulting from its failure to make the required contributions in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Seekonk, Massachusetts, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 24, 1992.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 16, 1998

Sarah M. Fox, Member

Peter J. Hurtgen, Member

J. Robert Brame III, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to make the required payments to the National Industry Union Pension Plan pursuant to article XXVII of 1990–1993 contract with Local 1702, United Paperworkers International Union, AFL–CIO, CLC.

WE WILL NOT fail to provide employees in the following unit the required health and life insurance coverage pursuant to article XIX of the 1990–1993 contract:

> All full-time and regular part-time drivers, jockeys, jockey-mechanics, and mechanics employed by us who service our account with Massachusetts Container Corporation in Marlboro, Massachusetts, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT fail to pay Island Transportation Company's obligations to unit employees pursuant to arbitration awards in American Arbitration Association

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

Cases 11 300 00741 91 and 11 300 02368 91, as required by the January 19, 1993 recognition agreement.

WE WILL NOT fail to pay Island's liability in Board Case 1–CA–28866, as required by *Golden State Bottling Co*.

WE WILL NOT fail to pay Island's pension liability to unit employees as required by the recognition agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make the required payments and contributions as required by articles XXVII and XIX of the 1990–1993 contract, the recognition agreement, and the Board's decision in Case 1–CA–28866.

WE WILL make whole unit employees by restoring their health and life insurance, making all delinquent payments and contributions, and reimbursing employees for any expenses resulting from our failure to make the required contributions.

AMERICAN TRUCK & TRAILER, INC.